

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD CLARK,)
Plaintiff,) Civil Action No. 06 - 1274
)
v.) Judge Joy Flowers Conti
)
JEFFREY A. BEARD; LOUIS S. FOLINO;)
LYNN ABRAHAM)
)
Defendants.)

MEMORANDUM ORDER

The above captioned case was initiated on September 22, 2006 and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Magistrate Judge Lisa Pupo Lenihan filed a Report and Recommendation on November 26, 2007 (doc. no.67), recommending that that the Motion to Dismiss filed by Defendants Beard and Folino (doc. no. 36) be granted and that the Amended Complaint be dismissed against Defendant Abraham pursuant to the authority granted courts by the Prison Litigation Reform Act (PLRA). Plaintiff filed Objections to the Report and Recommendation on December 13, 2007 (doc. no. 69). Plaintiff filed Supplemental Objections on January 7, 2007 noting, among things, that he had previously discontinued his claim against Abraham (doc. no. 71).

Plaintiff's Objections and Supplemental Objections do not undermine the recommendation of the Magistrate Judge. Specifically, Plaintiff's action is not a habeas corpus action. *See Bolus v. Cappy*, 141 Fed.Appx. 63, 65, 2005 WL 1669758, *3 (3d Cir. July 19, 2005) (recognizing that, while habeas corpus jurisdiction is a constitutionally-authorized exception to the

Rooker-Feldman doctrine, the exception was inapplicable because the appeal did not involve a petition for a writ of habeas corpus relief filed under 28 U.S.C. § 2254). Similarly, Plaintiff's case does not involve a petition for habeas corpus. Plaintiff filed a Complaint, not a petition for writ of habeas corpus. Moreover, Plaintiff signed an authorization allowing the deduction of the \$350.00 filing fee for civil rights actions (doc. no. 5). Finally, while Plaintiff did state that he wished to discontinue his claim against Defendant Abraham in his Brief in Opposition (doc. no. 49, p. 5-6) and in the Supplemental Objections (doc. no. 71), he further stated that he wished to discontinue it without prejudice to refiling. Thus, the Recommendation to dismiss the claim against Abraham under the PLRA is appropriate. Accordingly, his objections are overruled.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections and Supplemental Objections thereto, the following order is entered:

AND NOW, this 14th day of January, 2008;

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants Beard and Folino (doc. no. 36) is **GRANTED**.

IT IS FURTHER ORDERED that the Amended Complaint is **DISMISSED** against Defendant Abraham pursuant to the Prison Litigation Reform Act (PLRA).

IT IS FURTHER ORDERED that the Report and Recommendation (doc. no. 67) of Magistrate Judge Lenihan dated November 26, 2007 is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc: Lisa Pupo Lenihan
United States Magistrate Judge

Ronald Clark
CP-5079
SCI Greene
175 Progress Drive
Waynesburg, PA 15370